ANNEXURE NO. 11

[*Vide* Unstarred Question No. 1501 (a) to (c) answered on 16th December, 2004]

DETAILS OF THE FOURTH REPORT SUBMITTED BY INDIA TO THE COUNTER TERRORISM COMMITTEE

GOVERNMENT OF INDIA

FOURTH REPORT TO THE COUNTER TERRORISM COMMITTEE

Introduction

India has firmly and consistently supported U.N Security Council Resolutions 1373 and the work of the Counter Terrorism Committee (CTC). The three National Reports submitted by India to the CTC have attempted to give a comprehensive picture of steps taken by India to counter terrorism. Based on its own long experience of tackling terrorism the following points are being brought to the attention of the CTC with regard to India's perspective on the future work of the CTC and the compilation of National Reports. The Counter Terrorism Committee could look into some of these aspects in its future work.

- The emphasis in the CTC questionnaire and in its reporting requirement is on the legislative aspect. The operational, procedural and administrative aspects are also vital in devising an appropriate counter terrorism strategy. With the many complexities arising out of geography, large population, porous borders, lack of development in some sectors etc:, anti-terrorism strategies in India are built on a combination of 'on the ground experience' and 'administrative practices'. Local intelligence and policing are key to efforts to prevent, where possible, and combat, where necessary, acts of terrorism. Our reports try to capture the efforts made in this regard but often it is not possible to give an exhaustive description of mechanisms available.

- Looking at the future, counter terrorism measures will require a multi-track approach in many fields. The skills and technologies involved may vary from country to country and within a country from region to region. In tackling issues relating to border controls,money transfers, control of small arms, forged documents, etc., law enforcement officials will have to devise strategies depending on the needs of the situation. The experiences of countries in different regions and at different stages of development are likely to yield different approaches. Counter terrorism measures, therefore, have to cater to regional, national as well as context and functional specificities.

- The linkages between organized crime and terrorism need to be addressed. India welcomes the steps taken by the UN in this direction, and the latest effort by the UN Office on Drugs and Crime in Vienna to compile reports by member-States.

- A number of UN Security Council Resolutions mandate taking action against individuals/ entities listed in the relevant lists. However, the information supplied by the Counter Terrorism Committee/UN Security Council is often inadequate, as neither the details regarding the identity of individuals nor the requisite information on the facts concerning offences committed by them is supplied to states to enable them to take effective action. In the absence of such information, the probability of attempts to trace, detect, identify or deter such persons yielding fruitful results is low. Adherence to the due process of law requires relevant information, including that of the alleged offences committed by persons/entities listed in these resolutions to enable effective measures to be taken against them.

The compilation of the measures employed in Counter Terrorism efforts, described in the reports submitted to the CTC, is undertaken after extensive inter-agency and inter-ministerial consultations involving administrative, technical and procedural matters. This exercise to revise and update the information being provided to the CTC is ongoing and will continue in an appropriate manner in the future.

1. Implementation measures

Effectiveness in the protection of the financial system

1.1 Effective implementation of sub-paragraph 1 (a) requires States to have in place effective executive machinery for preventing and suppressing the financing of terrorist acts. In this context, does India provide its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

— typologies and trends aimed at countering terrorist financing methods and techniques;

— techniques for tracing property, which represents the proceeds of crime or which is to be used to finance terrorism, with a view to ensuring that such property is frozen, seized or confiscated?

Please outline relevant programs and/or courses. What mechanisms/programs has India put in place to train its different economic sectors in the detection of unusual and suspicious financial transactions related to terrorist activities and in the prevention of the movement of illicit money?

Inida's administrative, investigative, and prosecutorial authorities are provided specific training in enforcing laws relating to countering terrorist financing and money laundering. Administrative, investigative and prosecutorial officers are deputed to reputed national institutes to upgrade their skills, methods, techniques, etc. in investigation of cases. Some of these institutes are:

(i) National Police Academy, Hyderabad;

(ii) Military Intelligence Training School and Depot, Pune;

(iii) Central Bureau of Investigation (CBI) Academy, Ghaziabad;

(iv) Intelligence Bureau Central Training School, New Delhi; and

(v) National Judicial Academy, Bhopal.

The Central Bureau of Investigation Academy, Ghaziabad, for example, provides training, inter alia, on (i) scientific aids to investigation, (ii) scientific interrogation techniques, and (iii) investigation of cyber crime.

The Military Intelligence Training School and Depot, Pune addresses intelligence dissemination and investigation of cases relating to terrorist activities including financing of terrorist activities.

Courses on money laundering including detection of unusual and suspicious financial transactions are also offered at the National Academy of Customs, Excise and Narcotics, Faridabad; the Reserve Bank of India Training College, Mumbai; and the Staff College of the State Bank of India (SBI), Hyderabad.

1.2 The CTC would appreciate receiving the main provisions of the money Laundering Act (2003), together with an outline as to how the said provisions address the requirements of the Resolution.

The Prevention of Money Laundering Act (PMLA) has made the act of money laundering a criminal offence.

Under Section 3 of the PMLA:

"Whosoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offence of money laundering."

The Act also provides a schedule which lists out offences under various acts.

Section 4 of the **PMLA** provides for punishment for the offence of money laundering with rigorous imprisonment for a period ranging from 3 to 7 years and fine, which may extend to Rupees 500,000 (approximately US$ 10,000)

Sections 5 to 11 of the **PMLA** provide for attachment of property involved in money laundering, adjudication of such offences, confirmation of attachment of such properties and their ultimate confiscation on conclusion of a trial for any scheduled offence.

Sections 12 to 15 of the **PMLA** impose obligations on Banking Companies, Financial Institutions and Intermediaries to maintainproper records of all transactions, the nature and value of which may be prescribed and to furnish information of such transactions to the authority designated under the **PMLA** within a prescribed time and verification and maintenance of the records of the identify of all clients in such manner as may be prescribed.

Sections 16 to 19 of the **PMLA** provides for the power of survey, search and seizure, search of persons, arrests etc

Section 24 of the Act provides that the burden of proving that the proceeds of crime are untainted property shall be on the accused.

The Act also provides for establishment of the Appellate Tribunal and Special Courts for speedy disposal of cases under the **PMLA**.

Section 56 provides for agreements with foreign countries for enforcing the provisions of **PMLA** and exchange of information for the prevention of any attempts under **PMLA** or under corresponding law of the country with whom the agreement has been made or for the investigation of cases relating to any offence under **PMLA**.

A copy of **PMLA** is enclosed as part A

1.3 In regard to implementation of sub-paragraph 1 (a), could India please identify which Indian agency is in charge of receiving and analyzing reports on suspicious transactions, including transactions allegedly linked with the financing of terrorism? What powers have been entrusted to the agency with a view to dealing with those reports?

The Central Economic Intelligence Bureau (CEIB) is the apex organization for receiving and analyzing information pertaining to economic intelligence The CEIB was set up in 1985 for coordinating/strengthening intelligence gathering activities, investigation and enforcement of economic offences and laws by various agencies. The CEIB liaises with the concerned departments at the Central and State levels. The CEIB analyses all reports pertaining to economic intelligence received from different agencies, such as the Central Board of Direct Taxes, the Central Board of Excise and Customs etc., that are in charge of receipt/analyses of suspicious transaction reports (STRs) In the banking system , under the direction of the Reserve Bank of India (India's Central Bank), various banks (regional headquarters and headquarters) receive and analyze these reports

1.4 Sub-paragraph 1 (a) of the Resolution, as well as Article 18 of the International Convention for the Suppression of the Financing of Terrorism, require financial institutions and other intermediaries to identify their clients and to report suspicious financial transactions to the relevant authorities. In this regard, could India provide the CTC with an outline of the legal provisions which enable it to meet those requirements in full? The CTC would welcome an outline of the legal provisions which oblige financial intermediaries (such as lawyers, accountants,notaries and other professionals, when engaged in financial transactions) to report suspicious transactions to the relevant authorities. The CTC would also appreciate receiving an outline of the relevant legal provisions as regards Offshore Banking Units and bureaux de Change. In the absence of such provisions, the CTC would ask India to indicate the steps, which it intends taking in order to comply in full with this aspect of the Resolution. The CTC would also appreciate receiving an outline of the criteria used to determine what constitute suspicious transactions under India law.

Chapter IV of the Prevention of Money Laundering Act **(PMLA)** deals with the obligations of banking companies, financial institutions and intermediaries. Section 12 of the **PMLA** requires

every banking company or financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed whether it is a single transaction or series of transactions integrally connected to each other and where such series of transactions take place within one month, furnish such information to the Director (appointed under the **PMLA**) within the time prescribed. These records shall be maintained for five years from the date of cessation of the transaction. Further, when the principal officer of the banking company, financial institution and intermediaries has reason to believe that such transaction is valued below the prescribed value, he shall furnish such information to the Director within the prescribed time. If the Director finds during the enquiry that the provisions of Section 12 of the Act have been contravened then, without prejudice to any other action that may be taken under the Act, he may, by order, levy a fine which shall not be less than Rupees 10,000 (approximately US$ 200) but may extend to Rupees 100,000 (approx. US$ 2000) for each failure. Thus it is mandatory for the banking company, financial institutions and intermediaries including insurance companies to comply with the provisions of the Act.

Bureaux de Change are also covered under the Prevention of Money Laundering Act.

Section 14 of **PMLA** provides for protection of banking companies, financial institutional, intermediaries and their officers from any civil proceedings for the act of furnishing information under the **PMLA**

Individual cash transactions over Rupees 10 million (approx. US$ 200,000) each and all suspicious transactions have to be reported by Banks.

1.5 The CTC notes from India's supplementary report that the Foreign Exchange Regulation Act and the Foreign Exchange Management Act prohibit receiving and distributing payments throughout India without the permission of the Reserve Bank of India. In this regard, has India introduced legal provisions to regulate money remittance/ transfer services, including informal money or value transfer system (such as Hawala)? Is there a requirement to license or register those services? Must they identify their customers and report any suspicious transactions to the competent authorities? In the absence of such provisions, could India indicate the steps which it intends taking in order fully to comply with this aspect of the Resolution?

Hawala transactions (Informal Money Transfer Systems) are not permitted under the Foregin Exchange Management Act (**FEMA**) and are illegal. India has consistently taken the stand that "registration" of Hawala is an oxymoron as Hawala transactions, especially those relating to terrorist activities are, by their very nature, clandestine. The system is so largely based on trust that licencing or registration cannot succeed. The solution for eliminating/reducing Hawala is to extend regular money transfer services, making them more customer-friendly and accessible. Our response to the suggestions for regulating the 'informal' money transfer (Hawala) has been presented before various international fora on several occasions. In fact, we have consistently maintained that informal' cross border money transfers violate the provisions of **FEMA** and are therefore, illegal. Our position regarding informal value transfer/Hawala has been that since it is an illegal activity it can only be curbed and cannot be regulated.

Wire Transfer Services are allowed in India only after the concerned banking/non-banking entity registers with the Reserve Bank of India, and regular reports are received for this. The Suspicious Transactions Reporting system has still not been fully introduced in this sector but should become operational once the Financial Intelligence Unit (FIU), (being set up under the Department of Revenue, Ministry of Finance), becomes fully functional.

For other forms of remittances such as use of banking channels for money remittances, under the 'Money Transfer Service Scheme' (MTSS), a licence is required from the Reserve Bank of India, before a banking/non-banking entity can receive instructions from an overseas money transfer service provider to transfer amounts up to a certain limit to the beneficiaries.Any money transfer service carried out in India by any other agency without proper licence is illegal.

A copy of the Reserve Bank of India's guidelines on the registration of wire transfer services is enclosed as Part B.

1.6 In relation to money laundering and the financing of terrorism, could India provide an outline of any special strategy which it may have developed with a view to enabling its investigative agencies effectively to prevent resources from being transferred to terrorists (for example, through the under-invoicing of exports and the over-invoicing of imports, through the manipulation of real estate transactions and that of high value commodities such as gold, diamond and etc.)

Apart from PMLA and Prevention of Terrorism Act (POTA), the Government of India has enacted Foreign Exchange Management Act (FEMA), 1999 as a successor to the Foreign Exchange Regulation Act, 1973. The provisions of FEMA aim at preventing resources, either by way of under-invoicing of exports and over-invoicing of imports, from being transferred to undesirable elements including terrorists. Section 3 of FEMA prohibits dealings in foreign exchange etc. It lays down that:

"3. Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside Indian in any manner;

Explanation - For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation - For the purpose of this clause, "*financial transaction*" means making any payment to, or for the credit of any person or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security of acknowledging any debt."

Section 4 of FEMA 1999 restrains any person resident in India from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India except as specifically provided in the Act; while Section 7 deals with exports of goods and services. The Enforcement Directorate mandate includes acquisition of foreign currency illegally by person in India, non-repatriation of the proceeds of the exported goods, siphoning off of foreign exchange against fictitious and bogus imports, illegal acquisition of foreign exchange through Hawala etc.

1.7 In the context of the effective implementation of sub-paragraph 1 (a) of the Resolution, please explain the rules for identifying persons or entities which maintain bank accounts; or on whose behalf a bank account is maintained (i.e. the beneficial owners); or who are the beneficiaries of transactions conducted by professional intermediaries; as well as any other person or entity connected with a financial transaction. Are there any identification obligations imposed on customers who operate trusts with a view to obtaining information about the trustees, settlers/gurantors and beneficiaries? Please outline any procedures which enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

The Reserve Bank of India (RBI) has issued 'Know Your Customer' (KYC) guidelines to banks in August, 2002 requiring all banks, inter alia, to verify the identity of the customer on the basis of

reliable documents or through introduction by an existing account holder or a person known to the bank. In November, 2003, the RBI instructed all banks to ensure that customer identification for all existing accounts is also carried out on the basis of reliable documents within a fixed time frame. The issue relating to the identity of the beneficial owners is being examined. Under the Indian Trusts Act, 1882, it is mandatory for the trustees to give their name and addresses that are to be verified by a witness Similarly under the Societies Registration Act, 1860, it is mandatory to disclose the names and addresses of the members and office bearers of the society

The draft Rules under the Prevention of Money Laundering Act (PMLA), 2002 are in the process of being finalized by the Department of Revenue, Government of India and some of these issues including the arrangement for sharing the information with external agencies are expected to be addressed in the Rules Sections 56, 57, 58 and 59 of the PMLA, 2002 are relevant in this regard.

So far as the issue of assistance to foreign law enforcement agencies in respect of individuals having terrorist links is concerned, such assistance including mutual legal assistance may be extended through the existing bilateral mutual legal assistance treaties or under general provisions of the Criminal Procedure Code, 1973.

1.8 As regards the implementation of sub-paragraphs 1 (a) and (c) of the Resolution, as well as Article 8 of the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful if India could indicate the magnitude of the financial assets frozen, seized and confiscated in relation to the prevention of financing of terrorism.

Various assets suspected to be linked to terrorist financing have been seized under the Income Tax Act and Prevention of Terrorism Act (POTA) and are under disposal. While three bank accounts were frozen under POTA, no money was found in these accounts. It has been found that terrorist financing in India is mostly conducted through informal channels such as Hawala, Fake Indian Currency Notes (FICN), drug smuggling, etc.

As to the magnitude of financial assets frozen/confiscated in relation to the International Convention for the Suppression of the Financing of Terrorism, so far we have not detected any accounts relating to the terrorist entities included in the relevant UN Security Council resolutions. Prior to September 2001, two accounts of the Ariana Airlines were frozen, pursuant to the decision of the UN Security Council.

In addition a small number of bank accounts were also frozen under Indian domestic laws. However, no significant amount of money was found in these accounts and it is the assessment of Indian authorities that terrorists do not maintain accounts in their own names and their preferred source of financing is through informal channels. (This aspect has also been highlighted elsewhere in this report).

1.9 With regard to the effective implementation of paragraph 1 (d) of the Resolution, please indicate the number of cases in which India has taken judicial action against non-profit organizations on account of their suspected involvement in the financing of terrorism? Has India frozen the assets of any non-profit organization because of their links with terrorist groups or terrorist activities? The CTC would also welcome receiving examples of cases in which sanctions were imposed on those terrorist organizations. In regard to the auditing and monitoring of the collection and use of funds by charities, how does India coordinate the work of the various bodies entrusted with this work?

Financing of terrorism is an offence under the Prevention of Terrorism Act (POTA) which is implemented by the Ministry of Home Affairs and its subsidiary agencies. Government of India has recently issued an enabling notification to facilitate implementation of Security Council resolutions under India's United Nations Security Council Act. This is expected to further strengthen action against organizations in the future.

Over 30 organizations have been banned under the POTA. The procedure for prescribing organizations is laid down in Section 18 of POTA.

As far as overseas donations to charities are concerned, applications received by the Ministry of Home Affairs (MHA), are duly scrutinized and field enquiries conducted by the concerned agencies for establishing the genuineness of both the organization and the professed aims/objectives. If claims are found to be genuine, permission is accorded for making donations under the Foreign Contributions Regulatory Act (FCRA) The coordination of the work of various bodies is undertaken by a nodal unit in the Ministry of Home Affairs

1.10 As regards the implementation of sub-paragraph 1 (a) and (d), could India please provide the CTC with statistics on the number of cases where sanctions for providing support to terrorists or terrorist organizations were imposed on:

— **financial and non-financial institutions;**

— **financial intermediaries.**

Action on specific cases of providing support to terrorists or terrorist organizations is taken under relevant laws, including Prevention of Terrorism Act (POTA), and the Indian Penal Code (IPC) In January 2004, the Government of India issued an Order, under the UN Security Council Act 1947, empowering the Central Government to take measures to give effect to Resolutions 1267, 1333, 1390 and 1455 adopted by the United Nations Security Council requiring all States to take measures to combat international terrorism to

(a) prevent and suppress the financing of any terrorist act,

(b) prohibit any willful provision or collection, directly or indirectly, of funds by any individual or entity whether in or outside India, with the intention of using such funds or having the knowledge that they shall be used to carry out any terrorist act,

(c) freeze, seize or attach funds and other financial assets or economic resources, held by or on behalf of the individuals or entities listed in the Schedule,*

(d) prohibit any individual or entity from making any funds, financial assets or economic resources or financial or other related services available directly, or indirectly, for the benefit of individuals or entities listed in the Schedule,

(e) prevent the entry into or the transit through India of individuals listed in the Schedule,

(f) prevent any direct or indirect supply, sale and transfer, in or outside India, of arms and ammunition and other related materials to the individuals or entities listed in the Schedule

*(Taliban/Al Qaeda Sanctions list of the 1267 Committee)

No information is available with regard to cases where sanctions had to be applied on institutions for supporting terrorist actions

Effectiveness of counter-terrorism machinery

1.11 Effective implementation of 1373-related legislation covering all aspects of the Resolution requires States to have in place effective and coordinated executive machinery as well as to create and utilize adequate national and international anti-terrorist strategies. In this context, does India's counter-terrorism strategy and/or policy targeting (at national and/or sub-national level) deal with the following forms or aspects of counter terrorist activity:

— **Criminal investigation and prosecution;**

— **Counter-terrorist intelligence (human and technical);**

— **Special forces operations;**

— **Physical protection of potential terrorist targets;**

— **Strategic analysis and forecasting of emerging threats;**

— **Analysis of efficiency of anti-terrorist legislation and relevant amendments;**

— **Border and immigration control, control of preventing the trafficking in drugs, arms, biological and chemical weapons, their precursors and the illicit use of radioactive materials;**

— **Coordination of provincial agencies in all those areas.**

If possible, could India please outline the legal provisions and other administrative procedures as well as the best practices in this regard?

Under the Constitution of India, public order and police, (Entries 1 and 2 of List II of the Seventh Schedule of the Constitution of India), are responsibilities of states (provinces) At the same time, the Constitution confers on the Union the responsibility to protect every state (province) against external aggression and internal disturbances, and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution In pursuance of these obligations, the Union Ministry of Home Affairs extends manpower and financial support, guidance and expertise to state governments for the maintenance of security, peace and harmony without infringing upon the constitutional rights of states

In India investigation and prosecution of all types of crimes including terrorist cases are, therefore, dealt with by the state police & state prosecution machinery Most states have formed Anti-Terrorist Cells/Special Operational Groups/Special Task force to deal with terrorist activity within their jurisdiction

A Multi Agency Centre (MAC) has been set up in the Ministry of Home Affairs for coordinating counter-terrorism efforts The Centre pools, processes and disseminates actionable intelligence and converts raw intelligence into actionable intelligence on terrorist activities in the country

States have formed Special Operational Groups/Special Task Force/Special Intelligence Cell to conduct operations against terrorists There are also specialized well-trained security forces at Central Government level for dealing with grave & difficult situations The intelligence agencies at state & national level and the Multi Agency Centre analyze and forecast the emerging threats Central Government & State Governments review the efficiency of counter terrorism measures from time to time to strengthen and streamline their efforts

To check illegal migration, infiltration of terrorists, and trafficking in drugs, arms and other contraband across India's international borders, the Government of India has a system of border control in place India has implemented stringent immigration controls which utilize necessary data bases to check for terrorists/criminals and to prevent trafficking of drugs India has comprehensive legislation in place, namely the Narcotics Drugs & Psychotropic Substance Act, 1985 to regulate and control drugs and psychotropic substances as well as their precursors This law covers both domestic as well as international trafficking in these substances The Act also empowers custom authorities to interdict and seize narcotic drugs and psychotropic substances and their precursors and prosecute offenders The Border Security Force also has powers to seize narcotic drugs and psychotropic substances and precursor chemicals being trafficked across India's international borders A number of state agencies including state police have been empowered to enforce the provisions of the Act A special agency, namely, Narcotic Control Bureau has also been created both to enforce the provisions of the Act as well as to coordinate among the various central and state agencies which are empowered under the Act

Under Indian Arms Act, 1959, the illegal possession, transit, sale of arms/ammunition is punishable Prevention of Terrorism Act, 2002 contains provisions penalizing the unauthorized possession of arms/ammunitions, bombs, dynamites or hazardous explosive substances or other lethal weapons capable of mass destruction or biological/chemical substances of warfare Criminal intelligence departments & officers of the level of Director General of Police coordinate the function of various investigation agencies in the State

Counter-terrorism intelligence is collected by the Special Branches of State Police as well as Intelligence & Security Agencies at central level. These organizations use both human intelligence & technical intelligence to gather actionable intelligence against terrorists

The Atomic Energy Act, 1962 contains provisions which prevent the illicit acquisitions, possession, disposal, export, import of radioactive substances and whoever contravenes any provisions of the Act can be punished with imprisonment and fine. India is also party to the Convention on Physical Protection of Nuclear Material (CPPNM). India also co-sponsored the Resolution on the 'Code of Conduct on the Safety and Security of Radioactive Sources' adopted at the last IAEA General Conference

For streamlining intelligence efforts, the Intelligence Bureau (IB) has been designated as the nodal agency for counter terrorism. In order to optimize intelligence flows and coordination between multifarious agencies in the field of counter terrorism, a Multi Agency Center (MAC) has been created in the Intelligence Bureau at New Delhi supported by subsidiary Multi Agency Centers at state levels The Joint Task Force on Intelligence (JTFI) in the IB has been created for coordinating and synergizing the efforts of the intelligence wings of the central police organizations and special branches of the state police forces. The JTFI is supported by inter-state Intelligence support teams (ISISTs) meant for dealing with internal security threats concerning more than one state. The states have been requested to streamline and strengthen the special branches to be able to make full use of this mechanism.

In order to sensitize the state governments to the emerging threats in the internal security scenario and to ensure a coordinated approach for tackling the problems pertaining to internal security, two conferences, one of the Chief Secretaries and Director Generals of Police of States and the other of the Chief Ministers of states are now held every year.

The proper and effective management of borders is vitally important for national security, particularly cross border terrorism. The steps taken by the Government in this regard include additional raising of Border Guard Forces, deployment of hi-tech electronic surveillance equipments on the borders to act as force multiplier for effective border management, a pilot project for issue of multi purpose national identity cards in some states and Union Territories on an experimental basis, detection and deportation of illegal immigrants, a perspective plan for integrated infrastructure development of border areas and action plan to strengthen the coastal security.

Mutual Legal Assistance Treaty (MLAT) in Criminal Matters facilitate the widest measures of mutual assistance in the service of summons, execution of warrant and other judicial documents and improve the effectiveness of both countries in the suppression of crime, investigation, prosecution of crime related to terrorism and tracing, restraint, forfeiture or confiscation of proceeds and instruments of crime through cooperation India has signed agreements on MLAT with a number of countries.

India has established Joint Working Groups on Counter Terrorism with a number of countries to exchange information and strengthen international cooperation to combat terrorism.

1.12 The CTC would be grateful if India could please provide it with information concerning its counter terrorist efforts including, *inter alia*, an outline of targeted programs, the agencies involved as well as a description of the coordination mechanisms utilized by the agencies charged with implementing the provisions of Paragraph 2 and 3 of the Resolution. The CTC is particularly interested in the following areas:

- **— the recruitment to terrorist groups:**
- **— the tracing of links between criminal activities (in particular, drug trafficking) and terrorism;**
- **— the prevention of the establishment of terrorist safe havens and other forms of passive or active support for terrorists or terrorist groups, including *inter alia*, logistic support of terrorists (e.g. using of global information infrastructure).**

The Multi-Agency Center (MAC) and Subsidiary Multi-Agency Centers led by the Intelligence Bureau have been established for sharing information among various agencies including linkages between criminal activities such as drug trafficking and terrorism. In the event of any information gathered during drug investigations pointing to the financing of terrorist through drug trafficking,

institutional arrangements exist for sharing of such information and for acting upon it Similarly, information on cases involving joint seizures of arms, ammunition, explosives and drugs is also shared with concerned agencies

Coordination mechanism has also been described at 1.11 above.

The details of targeted programs cannot be provided for reasons of confidentiality

1.13 In the context of the effective implementation of sub-paragraph 2 (e), the CTC notes that the Prevention of Terrorism Act (2002), contains legal provisions concerning the interception of communications. Please indicate whether special investigative techniques can be used in India in cases of terrorism (e.g. observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences", etc.). Please explain what these techniques consist of as well as the legal conditions which govern their use (especially, whether they may only be applied to suspects, whether they may only be applied if approved by a court, the period for which they may be used, etc.). Could India indicate whether those techniques can be used in cooperation with another State?

Special investigative techniques such as surveillance, undercover operations, etc. are used in India in cases of terrorism as well as other serious offences. Techniques such as "pseudo-purchases" or "pseudo-offences" are not backed by any legal provision. "Controlled delivery" has been legalized under the Narcotics Drugs & Psychotropic Substance Act, 1985. The provision under the Act is as follows.

> "Controlled delivery" means the techniques of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorized under section 50-A with a view to identifying the persons involved in the commission of an offence under the Act "

Cooperation with another State in investigative techniques is a matter of bilateral understanding. The details cannot be gone into because of confidentiality.

1.14 The CTC noted from sub-paragraph 30 (1) of the Prevention of Terrorism Act (2002) that it has procedures in place aimed at protecting witnesses. In this regard, please indicate whether India has taken measures to protect persons who are vulnerable in the prosecution of terrorist cases (e.g. protection of the victims, of collaborators of justice, of judges and prosecutors)? Please describe the legal and administrative provisions in place to ensure this protection. Could India please indicate whether these measures can be utilized in cooperation with or at the request of another State?

The Constitution of India enjoins upon the State to protect the life & liberty of its citizens The protection of witnesses as per provisions of Prevention of Terrorist Act (POTA), 2002 includes in-camera trials, keeping the identity & address of witnesses' secret, not mentioning the names and addresses of the witnesses in orders or judgments or in any records of the case accessible to public. In case of danger to the life of witnesses, judges, prosecutors, the State Police provide adequate police protection.

As per Section 3(7) of POTA 2002, whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

State police organizations after assessing the threat perception makes adequate arrangements to protect individuals. These measures can also be utilized in co-operation with or at the request of another State to the extent it is specifically provided under mutual legal assistance agreement.

1.15 In regard to the effective implementation of sub-paragraphs 1 (d) and 2 (e) of the Resolution, as well as of Article 5 of the International Convention for the Suppression

of the Financing of Terrorism, please indicate whether India has introduced measures to establish the civil, criminal or administrative liability of legal persons for criminal offences, in particular offences related to terrorist activities? Please specify and provide an outline of the relevant legal provisions. Is it possible to assign liability to the legal person when no natural person has been convicted or identified?

The answer below should be read along with answer to question 1 2 As per the Prevention of Money Laundering Act (PMLA), 2002 and the Foreign Exchange Management Act (FEMA), person has been defined as "persons including an individual, a Hindu undivided family, a company, a firm, an association or persons or a body of individuals, whether incorporated or not, every artificial juridical person, not falling within any of the preceding sub-clauses, and any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses".

Similarly, the term 'person' in the Indian Penal Code (IPC) includes any company, or an association, or a body of person, whether incorporated or not This definition is applicable wherever the term 'person' is used in Criminal Procedure Code, Prevention of Terrorism Act (POTA), 2002 and Narcotics Drugs and Psychotropic Substance Act, 1985

1.16 The CTC noted from the third report of India (page 7) that legislation to implement the Convention on the Marking of Plastic Explosives is in process. In this regard, the CTC would be content to receive a progress report on the enactment of the relevant legislation, as well as on the steps taken by India to implement the International Convention for the Suppression of the Financing of Terrorism to which India has recently become a party.

In India, plastic explosives are not manufactured in the civilian sector. They are manufactured only in Defence Organizations which are exempted under Section 14 of the Explosives Act. Separately the Explosive Rules, 1983 are being revised to incorporate the provisions on the marking of plastic explosives The manufacture, possession, sale, import, transport etc of explosives is controlled and regulated

The legislation to implement the Convention on the Marking of Plastic Explosives is under process

Sections 6—17 of the Prevention of Terrorism Act (POTA) cover the entire gamut of financing of terrorism activities. The activities and channels relating to money laundering and informal movement of funds are regulated under the Prevention of Money Laundering Act (PMLA), the structure for implementation of which is under process. Other specific laws have also been used, description of which have been provided in our earlier reports to the CTC. As far as detection of cases and disruption of financing channels are concerned, those based on intelligence driven investigations and prosecution is undertaken under the relevant laws.

1.17 Effective implementation of sub-paragraph 2 (a) of the Resolution requires each member State, *inter alia*, to criminalize the recruitment to terrorist groups within its territory, whether the terrorist groups are operating within its territory or abroad. From previous report, it is not clear whether India law contains special provisions in this regard. In particular, it is not clear whether any of the provisions in India law address the following situation i.e.: the recruitment of persons in India with a view to undertaking terrorist activities in other countries. It is worth noting, in this respect, that this form of recruitment is sometimes based on a falsehood or deception. For example, persons may be recruited to work as teachers, although the real purpose of their recruitment may be very different. The CTC would be grateful for an outline of the legal provisions which will enable India to meet the requirements of this aspect of the Resolution. In their absence, the CTC would appreciate receiving an indication from India as to the steps which it intends taking in order to comply with this aspect of the Resolution.

The answer to this question is partly covered in the answer provided to question 1 11.

Under Section 1.4 of the Prevention of Terrorism Act (POTA), "any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India."

Under Section 18(4) of the Prevention of Terrorism Act, an organization shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

Section 4 of Indian Penal Code also provides for applications of Indian Penal Code in cases where any citizen of India commits offences in any place without and beyond India. The Indian Penal Code also deals with the cases of waging war against other Governments at peace with the Government of India (Sections 125-127).

As far as criminalizing recruitment to terrorist groups Section 3(3) of the Prevention of Terrorism Act provides that "Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine "

1.18 With regard to the implementation of sub-paragraphs 2 (a) and (d), India in its third report refers (at page 6) to sections 2, 3, 4, 121, 121A, 122 and 123 of the Indian Penal Code. The CTC notes that those legal provisions do not appear adequately to meet the requirements of the above mentioned sub-paragraphs. In particular, the provisions would appear inadequate to prevent the activities of those who use the territory of India to finance, plan, facilitate or commit terrorist acts against other States or their citizens. The CTC would appreciate receiving an outline of the legal provisions, if any, which enable India to meet these requirements. In their absence, could India indicate the steps which it intends taking to remedy the situation?

The existing provisions in Indian Penal Code and other legislations are found adequate to deal with the cases of financing, planning, facilitating or committing terrorist acts against other state or their citizens. It may also be noted that any case of intended hostile activity against a foreign Government will be dealt with by the Indian intelligence, administrative and police machinery effectively.

1.19 In the context of the effective implementation of sub-paragraph 2 (e), could India provide the CTC with information relating to the number of persons prosecuted in India for:

— terrorist activities;

— the financing of terrorist activities;

— recruiting to terrorist organizations;

— providing support to terrorists or terrorist organizations.

How many of these persons have been prosecuted for inviting support (including recruitment) for:

— prescribed organizations; and

— other terrorist groups or organizations?

Please outline the procedure used to prescribe foreign terrorist organizations (other those listed by the Security Council), as well as data as regards the number of organizations involved and/or corresponding examples. How long does it take to prescribe a terrorist organization at the request of another State or based on information supplied by another State?

As far as the spectrum of terrorist activities is concerned, they include covert activities, open activities, charitable activities, etc. As and when information is received about such activities,

proper investigation and action is undertaken Given the diversity of different types of such activities, a wide range of laws are applied including the Indian Penal Code, Indian Arms Act, Indian Explosives Act, Public Security Act, Public Safety Act, Prevention of Terrorism Act, Prevention of Money Laundering Act etc Since these also cover general criminal activities involving use of firearms, explosives, and other violent means, it is difficult to segregate which cases are specifically terrorist activities from those which are directly related to such crimes. Also given the wide dispersal of cases over different parts of the country, it is difficult to collate figures.

If the Government of India believes that an organization is involved in terrorism, it can list such an organization in the Schedule of the Act, prescribing it as a terrorist organization in accordance with Section 18(3) of the Prevention of Terrorism Act (POTA).

Effectiveness of customs, immigration and border controls

1.20 Effective implementation of sub-paragraphs 2 (c) and (g) of the Resolution requires the enforcement of effective customs, immigration and border controls so as to prevent the movement of terrorists and the establishment of safe havens. In this regard, please outline the legal and administrative procedures developed by India in order to protect its port facilities and ships, persons working in those port facilities and ships, cargo, cargo transport units as well as ships' stores from the risks of a terrorist attack. Have the competent Indian authorities put procedures in place to review and up-date transport security plans periodically? If yes, please outline.

The legal provisions contained in the Indian Ports Act, 1908 are applicable for protecting port facilities and ships, persons working in those port facilities and ships, cargo, cargo transport units as well as ships' stores from the risks of a terrorist attack An internal security apparatus is maintained at Indian Ports by the concerned Port Authorities as well as by the State Police Some of the major ports are provided additional security by the Central Industrial Security Force. Government of India has designated the Indian Register of Shipping (IRS) as the nodal agency to implement the International Ship and Port Facility Security (ISPS) Code. Accordingly, IRS inspects all ports and sends its reports to the Ministry of Shipping on a regular basis for taking necessary action Transport security is periodically reviewed in accordance with the prescribed procedures.

As the provisions of the Passport (Entry into India) Act, 1920 and the rules framed under it, every person, (except for nationals of Bhutan and Nepal), are required to be in possession of valid travel documents for entry into India. In case of a foreigner, a valid visa issued by a competent authority is required for entry into India entry into India is allowed only from specified entry points (immigration check-posts). Any person found entering into India without travel documents is arrested and handed over to the local police for taking further necessary action. Persons arrested for entering into India without travel documents or from unspecified points are liable to be awarded imprisonment up to a period of five years or with fine or with both. Persons who repeat the violation are liable to be awarded double the penalty prescribed for such violation. The stay and movement of foreigners inside the country is also governed by other Acts viz. Foreigners Act, Registration of Foreigner Act etc. and rules made there under.

Every foreigner who enters India with validity of their visa exceeding more than 180 days is required to register himself/herself with the concerned Foreigners' Registration Office within 14 days of his/her arrival in India.

1.21 In the context of the implementation of sub-paragraphs 2(b) and (j), has India implemented the standards and recommendations of the International Civil Aviation Organization (Annex 17)? Please inform the CTC as to whether ICAO has conducted a safety audit of India's international airports.

All standards of Annexure-17 to the Chicago Convention on International Civil Aviation are implemented at all civilian airports in India through clearly laid out rules and regulations, standard practices and procedures. Matters pertaining to safety and security of airports in India are within the purview of the Directorate General of Civil Aviation (DGCA). The Bureau of Civil Aviation Security (BCAS), an attached office of the Ministry of Civil Aviation headquartered in New Delhi, is responsible for laying down the standards of pre-embarkation security and anti-sabotage measures in

respect of civil flights in India Actual enforcement on the ground is entrusted to the respective local Police The Bureau is headed by an Officer of the rank of Director General of Police designated as Commissioner of Security, Civil Aviation (COSCA) It has 4 (Four) Regional Offices in Delhi, Calcutta, Mumbai and Chennai Officers of the Bureau visit airports from time to time to monitor the enforcement

The International Civil Aviation Organization (ICAO) has not yet conducted safety audit of India's international airports However, aerodrome license audit inspection of Kolkata and Chennai airports have been carried out by DGCA officials under the auspices of European Association of Aerospace Industries (EU/AECMA)-India Civil Aviation Project Further, safety audits of Delhi and Mumbai airports have been carried out in association with the Cooperative Development of Operational Safety and Continued Airworthiness Project (COSCAP) experts and action is in progress in respect of airports at Ahmedabad and Hyderabad ICAO audit is likely to follow sometime in August/September 2004

Effectiveness of controls preventing access to weapons by terrorists

1.22 Effective implementation of sub-paragraph 2(a) of the Resolution requires each Member State, *inter alia,* to have in place an appropriate mechanism to deny access to weapons to terrorists. With regard to this requirement of the Resolution as well as to the provisions of the Convention on the Marking of Plastic Explosives for the purpose of Detection and the International Convention for the Suppression of Terrorist Bombings please provide the CTC with information relevant to the following questions:

- **What national laws, regulations and administrative procedures exist to exercise effective control over firearms, ammunitions, explosives in following areas:**
  - **production;**
  - **acquisition;**
  - **transit;**
  - **retransfer**
- **What national measures exist to prevent the manufacture, stockpiling transfer and possession of unmarked or inadequately marked:**
  - **Small and light weapons;**
  - **Other firearms, their part and components and ammunition;**
  - **Plastic explosives;**
  - **Other explosives and their precursors**
- **Please specify procedures of export control and existing mechanism of exchange of information of sources, routs and methods of traders in arms.**
- **Has India's Custom Service implemented intelligence-based risk management on borders to identify high-risk goods? Please outline data elements required by Customs Administrations to identify high risk consignment prior to shipment.**
- **Has India implemented, using risk assessment principles, any special security measures on the import, export and transit movement of firearms, such as conducting security checks on the temporary storage, warehouses and means of transport carrying firearms, and requiring persons involved in these operations to undergo security vetting? If yes, please give details.**

India has comprehensive legislation to exercise effective control over firearms, ammunitions, explosives etc, in the form of the Arms Act, 1959 and rules made there under.

The Government of India took a policy decision regarding manufacturing activity in this area wherein it was decided that only those manufacturers would be allowed to continue their work whose units existed before independence of the country in 1947.

As per the existing provisions of the Arms Act, 1959, no person can acquire, possess, or carry firearms or ammunition without holding a licence issued under the Act. Also with a view to put stringent control over transfer/re-transfer of the firearms/ammunition, the Act provides that no person shall provide, obliterate, remove, alter, forge any name, number or any other identification mark or stamp or otherwise, shown on the firearms. No one is permitted to sell/transfer any firearm which does not bear the name of the maker, manufacturer's number or other identification mark or stamp, in the approved manner. Every firearms dealer has to maintain registers in the prescribed manner, indicating receipt, disposal, and balance of stock in hand and daily sales of arms/ammunition of different categories etc.

The Arms Act, 1959 along with the Arms Rules 1962 & The Arms Amendment Rules 1998 contains provisions to deal with illegal production, acquisition, transit, transfer, re-transfer etc of arms of all kinds. Sections 3 to 12 & Section 25 to 33 are relevant in this context.

The manufacture, possession, sale import, transport etc. of explosives is controlled and regulated as per the provisions of Explosives Rules, 1983 framed under the Explosives Act, 1884. As per the provisions of Explosives Rules, 1983, no person can manufacture, possess, sell, transport, import, or export explosives without having proper licence/approval from the Department of Explosive. The Department of Explosives is the statutory authority under the Explosives Act to issue licence for manufacture, possession, and sale etc. of explosives after due clearances from security agencies and local authorities and per the procedures laid down in the statute.

As per the Arms Act, 1959, no person can deposit any arms/ammunition in any warehouse without the approval of the Government. Where any arms or ammunition is found in any premises or vehicle or other place, the concerned person is liable to be punished for that offence as per the provisions of the Arms Act, 1959. Further, adequate powers have been delegated to officials for the purpose of ascertaining whether any contravention of the Act or the Rules made there under are being committed. In these circumstances, the competent authority is authorized to stop and inspect any vessel or vehicle or other means of conveyance and seize them.

The Directorate General of Customs and Central Excise is committed to install a Risk Management Module based on all identifiable risk parameters, including intelligence, in respect of imported cargo, at 23 Indian Customs Electronic Data Interchange System (ICES) locations by June, 2004. A Similar Risk Management Module for export goods has been developed and will be commissioned at all 23 ICES locations in the current year. The risk parameters in the Risk Management System have the provision to flash alert and generate specific direction regarding suspect goods, importers or exporters, and also cover security parameters. The risk management system is also designed to target invoice manipulation apart from other relevant factors.

India's domestic policy on Small Arms and Light Weapons is statutorily regulated under The Arms Act, 1959 and the Arms Rules, 1962, as amended from time to time, which cover all aspects of lawful possession, manufacture, sale, transfer, transport, export, import of arms and ammunition and provide penal provisions for their violation. In addition to the Arms Act, 1959 and The Arms Rules, 1962, the Government of India has enacted other laws providing for penal provisions related to illegal possession, manufacture, etc. of small arms and light weapons which include Prevention of Terrorism Act (2002), Armed Forces (special Powers) Act, Indian Penal Code, The Army Act and analogous laws.

All small arms manufactured in India have to be invariably proof-tested and bear identification mark stamping before their sale, as per the statutory provisions under the Arms Act, 1959. The Arms Act, 1959 provides that arms which do not bear specified identification marks may not be sold or transferred. Further, any person found in possession of a weapon without identification marks would be presumed to have removed/obliterated the marks unless proven otherwise and is liable to prosecution under the Arms Act, 1959.

The Central and State Police forces take action according to the provisions of the Arms Act, 1959 and the Arms Rules, 1962, and *inter alia* conduct routine checks to detect the cases of

possession/manufacture/sale of small arms and light weapons In case of any incident involving illicit arms, necessary action is taken by the concerned authorities under the provisions of the Arms Act and rules thereunder

The Indian Customs Electronic Data Interchange System (ICES) has a self-contained mechanism to enforce existing regulatory instructions In the event of import of such items by mis-declaration, the risk management system has been developed to alert Customs authorities against all such suspect consignments enabling detection, even if no prior intelligence is available with Custom authorities

1.23 With regard to the effective implementation of sub-paragraph 2(a), could India outline its mechanism and procedures as regards the implementation of the legal provisions or controls imposed on the export of goods; the transfer of technologies; the provision of technical assistance overseas; activities connected with the trade in controlled goods; with particular regard to denying terrorists access to weapons or hazardous materials. The CTC would appreciate it if India could provide it with statistics on the use of legal provisions to prevent terrorists from gaining access to weapons.

Through appropriate legislative, procedural and administrative measures, India has instituted an effective and comprehensive system to regulate strategic exports from India to ensure that these do not fall into wrong hands-whether state or non-state actors Laws such as The Explosive Substances Act, 1908; The Narcotic Drugs and Psychotropic Substances Act, 1985, The Environment Protection Act, 1986; The Atomic Energy Act, 1962; The Foreign Trade (Development and Regulation) Act, 1992; The Customs Act, 1962 form the legal basis of India's system of export controls. Various agencies of the Government are empowered to enforce the provisions of these laws.

With the objective of exercising control over the export of goods and technology of direct and indirect application to Weapons of Mass Destruction and the means of their delivery, the Government of India has specified a list of dual-use Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), the export of which is either prohibited or permitted only under license and the conditions included therein. This list is notified in Appendix 3 to Scheduled II of the ITC (HS) Classifications of Export and Import Items, 2002-2007.

All munitions are manufactured or traded in by entities that are wholly owned, controlled by or are on contract to the Government of India. Legal and administrative measures are in place for regulating exports of military stores which are permitted only under written permission of the relevant agencies of the Government unless specified otherwise in the Government's Export Import Policy. This permission *inter alia* rests upon end-use and end-user certification on a government to government basis and is in conformity with the Government of India's foreign policy objectives, which includes a ban on exports to countries under UN embargo.

1.24 The CTC is aware that India may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as per of India's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of resolution 1373.

Part-A

PREVENTION OF MONEY LAUNDERING ACT, 2002

Arrangement of Sections

SECTION		PAGE
	CHAPTER I	
	PRELIMINARY	
1.	Short title, extent and commencement	2 7
2.	Definitions	2 7
	CHAPTER II	
	OFFENCE OF MONEY-LAUNDERING	
3.	Offence of money-laundering	2.10
4	Punishment for money-laundering	2.10
	CHAPTER III	
	ATTACHMENT, ADJUDICATION AND CONFISCATION	
5	Attachment of property involved in money-laundering	2 10
6.	Adjudicating Authorities, composition, powers, etc	2 12
7.	Staff of Adjudicating Authorities	2 14
8	Adjudication	2 14
9.	Vesting of property in Central Government	2 15
10.	Management of properties confiscated under this Chapter	2 16
11.	Power regarding summons, production of documents and evidence, etc	2 16
	CHAPTER IV	
	OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES	
12.	Banking companies, financial institutions and intermediaries to maintain records	2 17
13	Powers of director to impose fine	2 17
14.	No civil proceedings against banking companies, financial institutions, etc , in certain cases	2 18
15.	Procedure and manner of furnishing information by banking company, financial institution and intermediary	2 18
	CHAPTER V	
	SUMMONS, SEARCHES AND SEIZURES, ETC.	
16	Power of survey	2 18
17	Search and seizure	2.19
18.	Search of persons	2 20
19.	Power to arrest	2 22
20.	Retention of property	2 22
21.	Retention of records	2 23
22.	Presumption as to records or property in certain cases	2 24
23	Presumption in inter-connected transaction	2 24
24.	Burden of proof	2 25
	CHAPTER VI	
	APPELLATE TRIBUNAL	
25.	Establishment of Appellate Tribunal	2 25
26.	Appeals to Appellate Tribunal	2.25
27.	Composition, etc., of Appellate Tribunal	2 26
28.	Qualifications for appointment	2.26
29.	Term of office	2 27

SECTION		PAGE
30	Conditions of service	2.27
31	Vacancies	2 27
32	Resignation and removal	2.28
33.	Member to act as Chairperson in certain circumstances	2.28
34.	Staff of Appellate Tribunal	2.28
35	Procedure and powers of Appellate Tribunal	2.28
36.	Distribution of business amongst Benches	2.29
37	Power of Chairperson to transfer cases	2.30
38.	Decision to be by majority	2.30
39.	Right of appellant to take assistance of authorised representative and of Government to appoint presenting officers	2 30
40.	Members, etc., to be public servants	2.30
41.	Civil Court not to have jurisdiction	2.30
42.	Appeal to High Court	2.31

CHAPTER VII

SPECIAL COURTS

43.	Special Courts	2.31
44.	Offences triable by Special Courts	2.31
45.	Offences to be cognizable and non-bailable	2.32
46	Application of Code of Criminal Procedure, 1973 to proceedings before Special Court	2 33
47.	Appeal and revision	2.33

CHAPTER VIII

AUTHORITIES

48.	Authorities under Act	2.33
49.	Appointment and powers of authorities and other officers	2.34
50.	Powers of authorities regarding summons, production of documents and to give evidence, etc.	2.34
51.	Jurisdiction of aurthorities	2.35
52	Power of Central Government to issue directions, etc.	2.35
53.	Empowerment of certain officers	2.36
54.	Certain officers to assist in inquiry, etc.	2.36

CHAPTER IX

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

55.	Definitions	2.36
56.	Agreements with foreign countries	2.37
57.	Letters of request to a contracting State in certain cases	2.37

(*a*) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6;

(*b*) "Appellate Tribunal" means the Appellate Tribunal established under section 25;

(*c*) "Assistant Director" means an Assistant Director appointed under sub-section (1) of section 49;

(*d*) "attachment" means prohibition of transfer, conversion disposition or movement of property by an order issued under Chapter III;

(*e*) "banking company" means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(*f*) "Bench" means a Bench of the Appellate Tribunal;

(*g*) "Chairperson" means the Chairperson of the Appellate Tribunal,

(*h*) "chit fund company" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in section 2 of the Chit Funds Act, 1982 (40 of 1982),

(*i*) "co-operative bank" shall have the same meaning as assigned to it in clause (*dd*) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961),

(*j*) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 49,

(*k*) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director as the case may be, appointed under sub-section (1) of section 49,

(*l*) "financial institution" means a financial institution as defined in clause (*c*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company

(*m*) "housing finance institution" shall have the meaning as assigned to it in clause (*d*) of section 2 of the National Housing Bank Act, 1987 (53 of 1987),

(*n*) "intermediary" means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992),

(*o*) "Member" means a Member of the Appellate Tribunal and includes the Chairperson,

(*p*) "Money-laundering" has the meaning assigned to it in section 3,

(*q*) "non-banking financial company" shall have the same meaning as assigned to it in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934),

(*r*) "notification" means a notification published in the Official Gazette,

(*s*) "person" includes—

(*i*) an individual,

(*ii*) a Hindu undivided family,

(*iii*) a company,

(*iv*) a firm,

(*v*) an association of persons or a body of individuals, whether incorporated or not,

(*vi*) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(*vii*) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses,

(*t*) "prescribed" means prescribed by rules made under this Act,

(*u*) "*proceeds of crime*" means any *property derived* or obtained, directly or indirectly, by any person as a result of criminal activity *relating to a scheduled offence* or the *value of any such property*,

(*v*) "*property*" means any *property or assets* of every description, whether corporeal or incorporeal, *movable or immovable, tangible* or *intangible* and includes *deeds and instruments evidence title* to, *or interest* in, such property or assets, whether located,

(*w*) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed,

(*x*) "Schedule" means the Schedule to this Act,

(*y*) "*scheduled offence*" means—

(*i*) the offences specified under Part A of the Schedule, or—IPC, NDPS

(*ii*) the offences specified under Part B of the Schedule if the total value involved in WC Act, I Trafficking Act, PCr. such offence is *thirty lakh rupees or more*

(*z*) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 43,

(za) "transfer' includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

(zb) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

Offence of money-laundering.

3. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering

Punishment for money-laundering.

4. Whoever commits the offence of money-laundering shall be punishable with reigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees.

Provided that where the proceeds of crime involved in money-laundring relate to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words which may extend to ten years" had been substituted

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

Attachment of property involved in money-laundering.

5. (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purpose of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter.

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule

Provided that no such order to attachment shall be made unless, in relation to an offence under—,

(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or

(ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested" in relation to any immovable property, includes all persons claiming or entitled to claim interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Adjudicating authorities, composition, powers, etc.

6. (1) The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, power and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members.

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority:—

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge, or

(ii) has been a Member of the Indian Legal Service and has held a post in Grade 1 of that service;

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify,

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction

(6) Notwithstanding anything contained in sub-section (5), the Chairmperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting

of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty-two years

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to his disadvantage after appointment

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before that Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the seniormost Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chiarperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure

Staff of Adjudicating Authorities.

7. (1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority

(3) The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

Adjudication.

8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18 if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person

Provided further that where such property is held jointly by more than one person such notice shall be served to all persons holding such property

(2) the Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1),

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and

(c) taking into account all relevant materials placed on record before him

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section(1) of section 5 or retention of property of record seized under section 17 or section 18 and record a finding to that effect such attachment or retention of the seized property or record shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court, and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquired, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property

Vesting of property in Central Government.

9. Where an order of confiscation has been made under sub-section (6) of section 8 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the central Government free from all encumbrances,

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized under Chapter V, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrances or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages

Management of properties confiscated under this Chapter.

10. (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 8 in such manner and subject to such conditions as may be prescribed

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 9

Power regarding summons, production of documents and evidence, etc.

11. (1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely —

(a) Discovery and inspection,

(b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath,

(c) compelling the production of records,

(d) receiving evidence on affidavits

(e) issuing commissions for examination of witnesses and documents, and

(f) any other matter which may be prescribed

(2) All the persons so summoned shall be bound to attend in person on through authorised agents as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal code (45 of 1860)

CHAPTER IV

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Banking companies, financial institutions and intermediaries to maintain records.

12. (1) Every banking company, financial institution and intermediary shall—

(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month,

(b) furnish information of transactions referred to in clause (a) to the Director within such time as may prescribed,

(c) verify and maintain the records of the identity of all its clients in such manner as may be prescribed

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director withing the prescribed time

(2) The records referred to in sub-section (1) shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be

Powers of director to Impose Fine.

13. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a banking company, financial

institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section

No civil proceedings against banking companies, financial institutions, etc., in certain cases.

14. Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

Procedure and manner of furnishing information by banking company, financial Institution and intermediary.

15 The Central Government may, in consultation with the Reserve Bank of India, prescribed the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

Power of survey.

16 (1) Notwithstanding anything contained in any other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—

(i) within the limits of the area assigned to him; or

(ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place,

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein, and

(iii) Furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act

Explanation.— For the purposes of this sub-section, a place, where an act which constitutes the comomission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the persons carrying on such activity slates that any of his records or any part of his property relating to such act are or is kept.

(2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

(3) An authority acting under this section may—

(i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,

(ii) make an inventory of any property checked or verified by him, and

(iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act

Search and seizure.

17 (1) Where the Director, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept,

(b) break open the lock of any door, locker, safe almirah or other receptacle for exercising the powers conferred by clause (*a*) where the keys thereof are not available,

(c) seize any record or property found as a result of such search,

(d) place marks of identification on such record or make or cause to be made extracts or copies therefrom,

(e) make a note or an inventory of such record or property,

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act

provided that no search shall be conducted unless, in relation to an offence under—

(a) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or

(b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section

(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the adjudicating Authority

Search of persons.

18 (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act,

he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed, and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-Four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer, superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person in brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct the search be made.

(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by any one except a female

(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search

Provided that no search of any person shall be made unless, in relation to an offence under—

(*a*) Paragraph 1 of Part A or Paragraph 1 or Paragrah 2 or Paragraph 3 or Paragraph 4 or Paragraph 5 of part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal procedure, 1973 (2 of 1974); or

(*b*) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offience by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

(10) The authority, seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application requesting for retention of such record or property, before the Adjudicating Authority.

Power to arrest.

19. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court

Retention of property.

20. (1) Where any property has been seized under section 17 or section 18, and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writting) that such property is required to be retained for the purposes of adjudication under section 8, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized

(2) The officer authorised by the Director immediately after he has passed an order for retention of the property for purposes of adjudication under section 8 shall forward a copy of the order along with material in his possession, referred to in sub-section (1), to the Adjudicating Authority in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period

(4) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy him-self that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8

(5) After passing the order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal.

Retention of records.

21. (1) where any records have been seized, under Section 17, or section 18, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized

(2) The person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy him-self that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer

authorised by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal

Presumption as to records or property in certain cases.

22 (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

(i) such records or property belong or belongs to such persons,

(ii) the contents of such records are true, and

(iii) The signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonable be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

(*a*) presume that the signature and every other part of such record which purports to be in the handwriting of any particular person, or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular persons, is in that persons's handwriting and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested.

(*b*) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence

Presumption in inter-connected transactions.

23 Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions

Burden of proof.

24 When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused

CHAPTER VI

APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

25 The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act

Appeals to Appellate Tribunal.

26 (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the appellate Tribunal

(2) Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a

period of forty-five days from the date on which 2 copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such as may be prescribed

Provided that the Appellate Tribunal may, after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against

(5) The Apellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be

(6) The appeal filed before the appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and

Resignation and removal.

32 (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office·

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Member to act as Chairperson in certain circumstances.

33 (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office

(2) When the Chairperson in unable to discharge his functions owing to absence, illness or any other cause, the seniormost Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties

Staff of Appellate Tribunal.

34 (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as the Government may think fit

(2) The officers and employees of the appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Procedure and powers of Appellate Tribunal.

35. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits,

(*d*) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(*e*) issuing commissions for the examination of witness or documents,

(*f*) reviewing its decisions;

(*g*) dismissing a representation for default or deciding it *ex parte*;

(*h*) setting aside any order of dismissal of any representation for default or any order passed by it *ex-parte*, and

(*i*) any other matter, which may be, prescribed by the Central Government,

(3) An order made by the appellate Tribunal under this act shall be executable by the appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court

(4) Notwithstanding anything contained in sub-section (3), the appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Distribution of business amongst Benches.

36. Where any Benches are consituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each bench.

Power of Chairperson to transfer cases.

37. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench

Decision to be by majority.

38. If the Members of a bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have hear the case, including those who first heard it.

Right of appellant to take assistance of authorised representative and of Government to appoint presenting officers.

39 (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellae Tribunal.

Explanation.—For the purposes of this sub-section, the expression 'authorised representative' shall have the same meaning as asigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961 (43 of 1961).

(2) The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal befor the Appellate Tribunal

Members, etc., to be public servants.

40 The Chairperson, Members and other officers and emplyees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Civil court not to have jurisdiction.

41 No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court.

42 Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law *or fact* arising out of such order.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filling the appeal within the said period, allow it to be filed within a further period not exceeding sixty days

Explanation —For the purposes of this section, 'High Court' means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain and

(ii) Where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII

SPEECIAL COURTS

Special Courts.

43. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification

Explanation —In this sub-section, 'High Court' means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

Offences triable by Special Courts.

44. (1) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974),—

(*a*) the scheduled offence and the offence punishable under section shall be triable only by the Special Court constituted for the an in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall contribute to try such scheduled offence, or

(*b*) a Special Court may, upon perusal of police report of the facts which constitute an offence under this act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to 'Magistrate' in that section includes also a reference to a 'Special Court' designated under section 43.

Offences to be cognizable and non-bailable.

45. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(*a*) every offence punishable under this Act shall be cognizable,

(*b*) no person accused of an offence punishable for a term of imprisonment of more than three years *under Part A of the Schedule* shall be releasd on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail

Provided that a person, who , is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Dirctor; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government,

(2) The limitation on granting of bail specified in clause *(b)* of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

46. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

Appeal and revision.

47. The High Court may exercise, so far as may be applicable, all the powers confered by Chapter XXIX or Chapter XXX of the Code of Criminal procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the Jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court

CHAPTER VIII

AUTHORITIES

Authorities under Act.

48. There shall be the following classes of authorities for the purposes of this Act, namely —

(*a*) Director or Additional Director or Joint Director

(*b*) Deputy Director,

(*c*) Assistant Director, and

(*d*) such other class of officers as may be appointed for the purposes of this Act.

Appointment and powers of authorities and other officers.

49 (1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act

Powers of authorities regarding summons, production of documents and to give evidence, etc.

50 (1) The Director shall, for the purposes for section 13, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely —

(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;

(*c*) compelling the production of records;

(*d*) receiving evidence on affidavits;

(*e*) issuing commissions for examination of witnesses and documents; and

(*f*) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the couse of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a Judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 to 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing ; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

Jurisdiction of authorities.

51. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions confered on, or assigned, as the case may be, to such authorities by or under this act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely—

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf.

Power of Central Government to issue directions, etc.

52. The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner, or

(b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Empoverment of certain officers.

53. The Central Government may, by a special or general order empower an officer not below the rank of Director of the Central Government or of a State Government to act as an authority under this Act.

Provided that the Central Government may empower an officer below the rank of Director if the officer of the rank of the Director or above are not available in a particular area

Certain officers to assist in inquiry, etc.

54. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely—

(a) officers of the Customs and Central Excise Departments

(b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956),

(e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934),

(f) officers of Police;

(g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999 (40 of 1999);

(h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992),

(i) officers of any other body corporate constituted or established under a Central Act or a State Act;

(j) such other officers of the Central Government, State Government local authorities or banking companies as the Central Government may, by notification specify, in this behalf.

CHAPTER IX

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Definitions.

55. In this Chapter, unless the context otherwise requires.—

(a) "contracting State" means any country or place outside India in respect of which arrangement have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) "identifying" includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3,

(c) "Iracing" means determining the nature, source, disposition movement, title or ownership of property,

Agreements with foreign countries.

56. (1) The Central Government may enter into an agreement with the Government of any country outside India for—

(a) enforcing the provisions of this Act;

(b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act;

and may, by notification in the official Gazette, make such provisions as may be necessary for implementing the agreement

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Letters of request to a contracting State in certain cases.

57. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investgating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contractipg State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to the court or an authority in the contracting State competent to deal with such request to—

(i) examine facts and circumstances of the case.

(ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.

Assistance to a contracting State in certain cases.

58. Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority an evidence connected therewith, the Central

Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or as the case may be, any other law for the time being in force

Receiprocal arrangements for processes and assistance for transfer of accused persons.

59. (1) Where a Special Court, in relation to an offence punishable under section, 4 desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce a document or other thing, or to produce it, or

(d) a search warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution—

(a) a summons to an accused person or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attent and produce a document or other thing, or to produce it, or

(d) a search-warrant,

issued by a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories full service or execution within its local jurisdiction, and where—

(i) a warrant of arrest has been executed, the person arrested shall, be dealt with in accordance with the procedure specified under section 19.

(ii) a search warrant has been executed, the things found in this search shall, so far as possible be dealt with in accordance with the procedure a specified under sections 17 and 18;

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other thing produced or things found in the search shall be forwarded to the court issueing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred a contracting State pursuani to sub-section (2) is a prisoner in India, the Special Court or the Central Govenrmment may impose such conditions as that Court of Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

Attachment seizure and confiscation, etc. of property in a contracting State or India.

60. (1) where the Director has made an order for attachment of any property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8. and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the administrator appointed under sub-section (1) of section 10, as the case may be may issue a letter of request to a court or an authority in the contracting State for execution of such order

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act

(3) The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

Procedure in respect of letter of request:

61. Every letter of request, sommons or warrant, received by the Central Government from and every letter of request summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

CHAPTER X

MISCELLANEOUS

Punishment for vexatious search

62. Any authority or officer exercising powers under this Act or any rules made thereunder, who, without reasons recorded in writing,—

(a) searches or causes to be scarched any building or place; or

(b) details or scarches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

Punishment for false information or failure to give information, etc.

63. (1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

(2) If any person,—

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act, or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign, or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority

Cognizance of offences

64 (1) No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the Central Government.

(2) The Central Government shall, by an order either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf

Code of Criminal Procedure, 1973 to apply

65 The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act

Disclosure of information

66 The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified to clause (i) or clause (ii) to perform his or its functions under that law

Bar of suits in civil courts

67 No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act

Notice, etc., not to be invalid on certain grounds

68 No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished, or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act

Recovery of fines

69. Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 (43 of 1961) for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Offences by companies.

70. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the

contravention and shall be liable to be proceeded against and punished accordingly

Provided that nothing containing in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly

Explanation —For the purposes of this section,—

(i) "company" means any body corporate and includes a firm or other association of individuals, and

(ii) "director", in relation to a firm, means a partner in the firm

Act to have overriding effect

71 The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force

Continuation of proceedings in the event of death or insolvency

72 (1) Where—

(a) any property of a person has been attached under section 8 and in appeal against the order attaching such property has been preferred, or

(b) any appeal has been preferred to the Appellate Tribunal, and—

(i) in a case referred to in clause (a), such person dies or is addicated an insolvent before preferring an appeal to the Appellate Tribunal, or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal, then, it shall be lawful for the legal representatives of such person or official assignee or the official receiver, as the case may be, to prefer appeal to the Appellate Tribunal or as the case may be, to continue appeal before the Appellate Tribunal In place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply such appeal

(2) Where—

(*a*) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 42, or

(*b*) any such appeal has been preferred to the High Court,—

then—

(*i*) in a case referred to in clause (*a*) , the person entitled to file the appeal dies or is adjudcated an insolvent before preferring an appeal to the High Court, or

(*ii*) in a case referred to in clause (*b*), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 42 shall, so far as may be, apply, or continue to apply to such appeal

(3) The powers of the official assignee or the offical receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act,1920 (5 of 1920), as the case may be

Power to make rules.

73. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —

(*a*) the form in which records referred to in this Act may be maintained,

(*b*) the manner in which the order and the material referred to in sub-section (2) of section 5 to be maintained;

(*c*) matters in respect of experience of Members under sub-section (3) of section 6,

(*d*) the salaries and allowances payable to and other terms and conditions of service of Members of the Adjudicating Authority under sub-section (9) of section 6;

(*e*) the salaries and allowances payable to and other terms and conditions of service of the officers and employees of the Adjudicating Authority under sub-section (3) of section 7;

(*f*) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 10,

(*g*) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (*f*) of sub-section (1) of section 11;

(*h*) the nature and value of transactions in respect of which records shall be maintained under clause (*a*) of sub-secion (1) of section 12,

(*i*) the time within which the information of transactions under clause (*b*) of sub-section (1) of section 12 shall be furnished;

(*j*) the manner in which records shall be verified and maintained by banking companies, financial institutions and intermediaries under clause (*c*) of sub-section (1) of section 12;

(*k*) the procedure and the manner of maintaining and furnishing in formation under sub-section (1) of section 12 as required under section 15;

(*l*) the manner in which the reasons and the material referred to it sub-section (2) of section 16 shall be maintained,

(*m*) the rules relating to search and seizure under sub-section-(1) of section 17;

(*n*) the manner in which the reasons and the material referred to in sub-section (2) of section 17 shall be maintained,

(*o*) the manner in which the reasons and the material referred to in sub-section (2) of section 18 shall be maintained;

(*p*) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained;

(*q*) the manner in which records authenticated outside India may be received under sub-section (2) of section 22;

(*r*) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 26;

(*s*) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under siction 30;

(*t*) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 34;

(*u*) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 35;

(*v*) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (*f*) of sub-section (1) of section 50;

(w) the rules relating to impounding and custody of records under sub-section (5) of section 50,

(x) any other matter which is required to be, or may be, prescribed

Rules to be laid before Parliament.

74 Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modifed form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

Power to remove difficulties.

75 (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty,

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament

SCHEDULE

[*See* section 2 (y)]

PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	*Description of offence*
121	Waging, or attempting to wage war or abetting waging of war, against the Government of India
121A	Conspiracy to commit offences punishable by section 121 against the State

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

15	Contravention in relation to poppy straw
18	Contravention in relation to opium poppy and opium
20	Contravention in relation to cannabis plant and cannabis
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India or transhipment of narcotic drugs and psychotropic substances
24	External dealings in narcotic durgs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy

PART B

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	*Description of offence*
302	Murder
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death
307	Attempt to murder
308	Attempt to commit culpable homicide
327	Voluntary causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329	Voluntary causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence
364A	Kidnapping for ransom, etc
384 to 389	Offences relating to extortion
392 to 402	Offences relating to robbery and dacoity
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc
489A	Counterfeiting currency notes or bank notes
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE ARMS ACT, 1959

Section	*Description of offence*
25	To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunication in contravention of section 5 of the Arms Act, 1959
	To acquire, have in possession or carry any prohibited arms or prohibited ammunication in contravention of section 7 of the Arms Act, 1959
	Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas etc
	Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas
	Other offences specified in section 25.
26	To do any act in contravention of any provisions of section, 3,4, 10 or 12 of the Arms, Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.
	To do any act in contravention of any provision of section 5,6, 7, or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.
	Other offences specified in section 26
27	Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms for unlicenced person or for delivering arms, etc to person not entitled to possess the same
30	contravention of any condition of a licence or any provision of the Arms Act, 1959 or any rule made thereunder

PARAGRAPH 3

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

Section	*Description of offence*
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting etc of specified plants
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc to be Government property
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc, by licensee
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animal articles, etc, derived from scheduled animals

PARAGRAPH 4

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	*Description of offence*
5	Procuring, inducing or taking person for the sake of prostitution
6	Detaining a person in premises where prostitution is carried on
8	Seducing or Soliciting for purpose of prostitution
9	Seduction of a person in custody

PARAGRAPH 5

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

Section	*Description of offence*
7	Public servant taking gratification other than legal remuneration in respect of an official Act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant
9	Taking gratification for exercise of personal influence, with public servant
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988

PART-B

EXISTING ARRANGEMENTS FOR MONEY TRANSFERS TO INDIA

(i) The Reserve Bank of India authorises banks to undertake foreign exchange transactions under the Foreign Exchange Management Act (FEMA) If entities other than those authorised by Reserve Bank of India undertake foreign exchange transactions in India, it is illegal

(ii) Banks are also allowed to tie up with private exchange houses in the Middle East and Singapore for channelising remittances into the country mainly on private account Trade remittances up to Rs. 200,000 are also permitted through these arrangements. These approvals are subject to the following conditions

(a) Only exchange houses with valid licences issued by respective central banks and chambers of commerce and industry and having a clean chit from the Indian Embassy in the country concerned are allowed to enter into these arrangements

(b) To facilitate transfer of funds, exchange houses have to open accounts with banks in India and fund the accounts by remittances through the nostro account of the bank

(c) No cash payments are allowed to the beneficiaries, all the payments are routed through the bank accounts of the beneficiaries

(d) This mode of transfer of funds can be used only for certain specified purposes, remittances for other purposes including donations to charitable institutions cannot be made through this mode

(iii) Money Transfer Service Scheme

The scheme envisages tie up of overseas principals with Indian agents with the approval of Reserve Bank of India for distribution of the remittances to the beneficiaries, subject to the following

(a) The Indian agent has to be a bank, a full-fledged moneychanger or a non-banking finance company registered with the Reserve Bank

(b) The overseas principals should be licensed entities in the respective countries and should have a good credit rating

(c) They should have well monitored anti money laundering systems in place

(d) Reimbursements from overseas principals are received by the agent in India within a day or two of making payment to the beneficiaries, through the nostro account of the bank

(e) The overseas principals are also required to place a security deposit in the name of the Indian agent to cover their credit-risk

(f) A cap of USD 2500 is placed on each remittance

(g) A beneficiary cannot receive more than 12 remittances annually through the overseas principal

(h) Remittances in excess of Rs 50,000 cannot be delivered in cash, but must be paid to the beneficiary only by cheque/demand draft or by direct credit to his account

(i) All the agents should make available full details of the remitters as well as beneficiaries, if called for